

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, CINDY BARBERA,
CARLENE BECHEN, RONALD BIENDSEIL,
RON BOONE, VERA BOONE, ELVIRA
BUMPUS, EVANJELINA CLEEREMAN,
SHEILA COCHRAN, LESLIE W. DAVIS III,
BRETT ECKSTEIN, MAXINE HOUGH,
CLARENCE JOHNSON, RICHARD KRESBACH,
RICHARD LANGE, GLADYS MANZANET,
ROCHELLE MOORE, AMY RISSEEUW, JUDY
ROBSON, GLORIA ROGERS, JEANNE
SANCHEZ-BELL, CECELIA SCHLIEPP,
TRAVIS THYSSEN,¹

Civil Action
File No. 11-CV-562

Three-judge panel
28 U.S.C. § 2284

Plaintiffs,

v.

Members of the Wisconsin Government
Accountability Board, each only in his official
capacity: MICHAEL BRENNAN, DAVID
DEININGER, GERALD NICHOL, THOMAS
CANE, THOMAS BARLAND, and TIMOTHY
VOCKE, and KEVIN KENNEDY, Director and
General Counsel for the Wisconsin Government
Accountability Board,

Defendants.

**PLAINTIFFS' NOTICE OF MOTION AND MOTION
TO COMPEL DISCLOSURE
Rule 37(a)(3)(A), Fed. R. Civ. P.**

NOTICE OF MOTION AND MOTION

TO: Assistant Attorney General Maria S. Lazar
Wisconsin Department of Justice
17 W. Main Street
Madison, Wisconsin 53703

¹ On November 18, 2011, plaintiffs filed their Second Amended Complaint and a complementary Motion to Amend the Caption.

PLEASE TAKE NOTICE that, pursuant to Fed. R. Civ. P. 26(a) and 37(a)(3)(A), plaintiffs, by their counsel, Godfrey & Kahn, S.C., move this Court for an order compelling defendants to disclose the name, address, and telephone number of each individual likely to have discoverable information that may be used to support their position in this matter. This motion is supported by the Brief in Support of Plaintiffs' Motion to Compel Disclosure, the Declaration of Rebecca Kathryn Mason in Support of Plaintiffs' Motion to Compel Disclosure, and the Civil Local Rule 37 Certification to Accompany Plaintiffs' Motion to Compel Disclosure, all filed concurrently.

GROUND

1. This Court's Scheduling and Discovery Order, dated November 14, 2011 ("Scheduling Order"), required the parties to exchange initial Rule 26 disclosures simultaneously on or before November 16, 2011. Plaintiffs and defendants exchanged their disclosures on November 16 at 4:00 p.m. *See* Declaration of Rebecca Kathryn Mason ("Mason Decl."), ¶ 2, Ex. A, B. Defendants' disclosures were incomplete, however, to the point of being valueless. They supplied generic categories of individuals but failed to disclose the names, addresses, and telephone numbers mandated by the Federal Rules—excepting only the names of Government Accountability Board staff members who, they acknowledged, know nothing about the genesis of the statutes at issue.

2. Rule 26(a)(1)(A)(i) requires each party to provide "the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment." Plaintiffs' disclosures complied with the rule; defendants' disclosures, on their face, did not.

3. Defendants' disclosures of "individuals" pursuant to Rule 26(a)(1)(A)(i) appeared as follows:

Defendants assert that the Government Accountability Board ("GAB") did not prepare, edit, or in any other way draft the redistricting maps for the new boundaries which were . . . signed into law (2011 Wisconsin Acts 43 and 44) by the Governor on August 9, 2011. GAB and the individual defendants have been sued because of their statutory responsibility to implement the districts that are now the law of the State. The defendants had no communications with the Legislature

Based on the foregoing, the defendants make the following initial disclosures in accordance with the Court's Scheduling Order dated November 14, 2011:

1. Defendant Kevin J. Kennedy (GAB Director and General Counsel), Nathaniel E. Robinson (GAB Division Administrator, Elections Division), and other [GAB] staff members or contracted employees, including but not limited to, Ross Hein, Sarah Whitt, David Grassel, Ann Oberle, and David Meyer, with respect to the implementation of the new redistricting maps.
2. Individuals from the Legislature, and/or its various bodies, or those individuals on the Legislature's behalf, who were involved in drawing the redistricting maps . . . , including without limitation, those individuals who reviewed the 2010 decennial census and assisted in determining the appropriate, constitutional boundaries for the state and Congressional districts as memorialized in Acts 43 and 44.
3. Individuals from the Legislature, and/or its various bodies, or those individuals on the Legislature's behalf, who were involved in reviewing census and population data from the 2010 decennial census to insure minimum population deviation for the new districts.
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9. Individuals from the Legislature, and/or its various bodies, or those individuals on the Legislature's behalf, who assisted the Legislature to insure that the new districts reflected communities of interest

along with race and that, where possible, minority citizens comprising a numerical majority of the citizen voting age population.

10. Individuals who reside in, or are familiar with, challenged districts and/or pre-existing districts with respect to facts about those districts that are relevant to the constitutionality of the new redistricting maps.
11. Experts retained on behalf of the Legislature, and/or its various bodies, who assisted in preparing the redistricting maps.
12. Experts to be retained on behalf of the defendants who will assist in defending against the allegations in the First Amended Complaint.
13. Other individuals whose identity will become known through further discovery.

4. Defendants violated Rule 26(a)(1)(A)(i) because they did not provide any names, addresses, or telephone numbers with respect to 11 of the 12 generic categories of individuals listed in their initial disclosures.

5. They acknowledged, as they must, that “individuals . . . or those individuals on the Legislature’s behalf . . . ,” planned, developed, and devised the redistricting plans, yet they failed to disclose the names of those individuals. Mason Decl., ¶ 2, Ex. B at 2-4.

6. They acknowledged, as they must, reports and other materials involved in the complex redistricting process, but they fail to identify the names of the individuals who authored and drafted those materials. *Id.* at 5.

RELIEF REQUESTED

WHEREFORE, plaintiffs respectfully request that this Court enter an order (1) compelling defendants to supply the name, address, and telephone number of all individuals likely to have discoverable information that they may use to support their defense; (2) precluding defendants from using any information or witness they do not disclose in compliance with such

an order “to supply evidence on a motion, at a hearing, or at a trial,” Fed. R. Civ. P. 37(c)(1); and (3) awarding plaintiffs their costs and fees under Rule 37(a)(5)(A).

Dated: November 21, 2011.

GODFREY & KAHN, S.C.

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**Admission to the United States District Court for the Eastern District of Wisconsin is pending.*

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